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**NEW YORK STATE**  
**REGISTER**

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- Reports of Child Abuse in an Educational Setting
- Professional Development Plans and Other Related Requirements for School Districts and BOCES
- Congestion Surcharge

**Notice of Availability of State and Federal Funds  
Financial Reports**

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State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 60 days following publication in the *Register* of a Notice of Proposed Rule Making, or a Notice of Emergency Adoption and Proposed Rule Making; and for 45 days after publication of a Notice of Revised Rule Making, or a Notice of Emergency Adoption and Revised Rule Making in the *Register*. When a public hearing is required by statute, the hearing cannot be held until 60 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

***For notices published in this issue:***

- the 60-day period expires on August 25, 2019
- the 45-day period expires on August 10, 2019
- the 30-day period expires on July 26, 2019

KEY: (P) Proposal; (RP) Revised Proposal; (E) Emergency; (EP) Emergency and Proposal; (A) Adoption; (AA) Amended Adoption; (W) Withdrawal

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Individuals may send public comment via electronic mail to those recipients who provided an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings. Choose pertinent issue of the *Register* and follow the procedures on the website ([www.dos.ny.gov](http://www.dos.ny.gov))

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5 / Professional Development Plans and Other Related Requirements for School Districts and BOCES (RP)

**Environmental Conservation, Department of**

6 / BEACH Act Standards and Reclassification Rule (A)

**Gaming Commission, New York State**

11 / Sports Wagering at Gaming Facilities (A)

13 / Cash 4 Life Multi-Jurisdiction Lottery Game (A)

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13 / Operation of Crisis Residences in New York State (A)

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sions of the Commissioner's Regulations. Specifically, Sections 52.21, 57-2, 75.8, 80-1, 80-2, 80-3, 80-5, 80-6, 90.18, 100.2, 100.13, 100.15, 100.17, 100.19, 151-1, 154-2, and 200.2 of the Commissioner's Regulations and 30-1, 30-2, and 30-3 of the Rules of the Board of Regents are amended to change references to professional development to professional learning. Additionally, Section 80-3.6 of the Commissioner's Regulations, which prescribed professional development requirements for teachers through the 2016-17 school year, is repealed since that school year has ended and the section is no longer applicable. Conforming edits were also made to other sections of Part 80 consistent with the repeal of Section 80-3.6.

**Revised rule making(s) were previously published in the State Register on January 30, 2019.**

**Revised rule compared with proposed rule:** Substantial revisions were made in section 100.2(dd).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Kirti Goswami, NYS Education Department, 89 Washington Avenue, Office of Higher Education, Albany, NY 12234, (518) 473-2183, email: legal@nysed.gov

**Data, views or arguments may be submitted to:** Petra Maxwell, NYS Education Department, 89 Washington Avenue, Office of Higher Education, Albany, NY 12234, (518) 486-3633, email: petra.maxwell@nysed.gov

**Public comment will be received until:** 45 days after publication of this notice.

#### Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on January 30, 2019, the following substantial revisions were made to the proposed rule:

Require that the appointment of teachers to serve on the Professional Learning Team for the central office of the New York City Department of Education (NYCDOE) shall be upon designation by the teachers' collective bargaining organization; and

Removed the requirement that professional learning teams for each community school district, District 75, District 79, and the high school districts of the NYCDOE be a subcommittee of the District Leadership Team (DLT).

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Impact Statement.

#### Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on January 30, 2019, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

#### Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on January 30, 2019, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

#### Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on January 30, 2019, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revised proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the revised proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### Assessment of Public Comment

1. COMMENT: Two commenters expressed concern regarding the fact that teachers who serve as members of the professional learning team for the central office of the NYCDOE are selected by the chancellor and not designated by the teachers' collective bargaining organization, noting that this process is different than that for every other school district in New York State.

DEPARTMENT RESPONSE: The Department has revised the proposed amendment to require that teachers who serve as a member of the professional learning team for the central office of the NYCDOE be upon designation by the teachers' collective bargaining organization consistent with the requirements for all other districts across the state.

2. COMMENT: One commenter expressed concern that the professional learning teams for each community school district, District 75, District 79,

and the high school districts of the NYCDOE were to be a sub-committee of the District Leadership Team (DLT).

DEPARTMENT RESPONSE: The Department has revised the proposed amendment to remove this requirement to ensure that each local professional learning team can include representatives that can help to identify professional learning opportunities that will ensure all educators are able to meet the needs of all learners.

3. COMMENT: One commenter noted that the changes should not take effect until July 1st to give districts time to implement changes. The same commenter also believes that increasing the number of CTLE that can be claimed for mentoring is problematic.

DEPARTMENT RESPONSE: No changes are necessary. The earliest the proposed amendments can be permanently adopted by the Board is at its July meeting. Therefore, the changes will not take effect until after July 1. Regarding the decision to increase the number of CTLE hours that can be claimed for mentoring, the Department received many comments on both sides of this issue (see Assessment of Public Comment, Attachment D to January 2019 Regents Item: <http://www.regents.nysed.gov/common/regents/files/119hed2.pdf>). The proposed amendments reflect a compromise between those diverse perspectives.

## Department of Environmental Conservation

### NOTICE OF ADOPTION

#### BEACH Act Standards and Reclassification Rule

**LD. No.** ENV-12-18-00043-A

**Filing No.** 563

**Filing Date:** 2019-06-05

**Effective Date:** 2019-11-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Parts 700, 703 and 890 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301(2)(m), 15-0313(1), (2), (3), 17-0301(2) and (9)

**Subject:** BEACH Act Standards and Reclassification Rule.

**Purpose:** To comply with the Federal BEACH Act of 2000 (P.L. 106-284) and protect coastal recreation waters for recreation.

**Text of final rule:** Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 700, entitled "Definitions, Samples and Tests," is amended as follows:

Subdivision (a) of Section 700.1 is amended by adding the following definition:

(73) *Coastal recreation waters mean the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under section 303(c) of the federal Clean Water Act by the State for use for swimming, bathing, surfing, or similar water contact activities. Coastal recreation waters do not include inland waters or waters upstream of the mouth of a river or stream having an unimpeded natural connection with the Great Lakes or open marine waters.*

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 703, entitled "Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations," is amended as follows:

Section 703.4 is amended as follows:

§ 703.4 Water quality standards for coliforms, *enterococci*, and *E. coli*.

Total and fecal coliform, *enterococci*, and *E. coli* standards for specific classes are provided in this section.

There are no changes to subdivisions (a), (b), or (c) of section 703.4.

A new subdivision (d) within section 703.4 is adopted to read as follows:  
(d) *Enterococci (number per 100 mL (colony-forming units or most probable number))*

Classes	Standard
Coastal recreation waters of the following classes: SA and SB	The geometric mean of samples collected over any consecutive 30-day period shall not exceed 35, and no more than 10 percent of the samples collected in the same 30-day period shall exceed 130.

A new subdivision (e) within section 703.4 is adopted to read as follows:

(e) *E. coli* (number per 100 mL (colony-forming units or most probable number))

Classes	Standard
Coastal recreation waters of the following classes: A, A-Special, AA, AA-Special, and B	The geometric mean of samples collected over any consecutive 30-day period shall not exceed 126, and no more than 10 percent of the samples collected in the same 30-day period shall exceed 410.

A new subdivision (f) within section 703.4 is adopted to read as follows:

(f)(1) *The enterococci standards for Class SA and SB coastal recreation waters shall apply: (i) during the period of May 1 through October 31; (ii) in any other instance where the Department determines it necessary to protect human health or the best usages of the waters; and (iii) where required by state or federal law or interstate compact.*

(2) *The E. coli standards for Class A, A-Special, AA, AA-Special and B coastal recreation waters shall apply: (i) during the period of May 1 through October 31; (ii) in any other instance where the Department determines it necessary to protect human health or the best usages of the waters; and (iii) where required by state or federal law or interstate compact.*

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 890, entitled "New York City Waters" is amended to read as follows:

Table I of section 890.6 is amended as follows:

890.6 Table I.

TABLE I

CLASSIFICATIONS AND STANDARDS OF QUALITY AND PURITY ASSIGNED TO FRESH SURFACE WATERS AND TIDAL SALT WATERS, INCLUDING CERTAIN TIDAL WATERS OF THE INTERSTATE SANITATION DISTRICT WITHIN DESIGNATED DRAINAGE BASINS OF NEW YORK BAY, RARITAN BAY AND A PORTION OF THE ATLANTIC OCEAN, INCLUDING THE SUBBASINS OF ARTHUR KILL, KILL VAN KULL, THE HARLEM RIVER AND THE LOWER EAST RIVER, BRONX, KINGS, NEW YORK, QUEENS, RICHMOND AND WESTCHESTER COUNTIES, NEW YORK

Item No.	Waters Index Number	Name	Description	Map Ref. No.	Class	Standards
4		Lower New York Bay portion including Gravesend Bay	That portion of Bay south of The Narrows and bounded on north by line from tip of Fort Wadsworth to tip of Fort Hamilton; and bounded on south by line from south limits of Fort Wadsworth Military Reservation to Norton Point at western tip of Coney Island peninsula near Sea Gate, including Gravesend Bay.	S-23se [I]SB S-24sw	[I]SB	[I]SB

Item No.	Waters Index Number	Name	Description	Map Ref. No.	Class	Standards
6		Upper New York Bay including The Narrows, Atlantic Basin, Gowanus Bay	That portion of Bay within New York bounded on south by line from tip of Fort Wadsworth to tip of Fort Hamilton; and bounded on west by shore of Staten Island north of tip of Fort Wadsworth, thence by north-south line across mouth of Kill Van Kull from northernmost point of Staten Island to easternmost point at Constable Point, Bayonne, New Jersey, thence by New York-New Jersey boundary line from mouth of Hudson River; and bounded on north by true east-west line passing through southernmost tip of Manhattan Island at the Battery and intersecting state boundary line, thence by line extending from same point at the Battery across mouth of Lower East River to western tip of pier 17 at Brooklyn; thence bounded on east by western shore of Brooklyn from pier 17 south to Fort Hamilton, excluding Erie Basin.	S-23ne [I]SB S-23se S-24nw	[I]SB	[I]SB

Map 3 of section 890.9 is repealed and the section is marked "Reserved"

Map 4 of section 890.10 is repealed and the section is marked "Reserved"

**Final rule as compared with last published rule:** Nonsubstantive changes were made in Parts 700 and 703.

**Revised rule making(s) were previously published in the State Register on February 27, 2019.**

**Text of rule and any required statements and analyses may be obtained from:** Michelle Tompkins, Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, New York 12233, (518) 402-8179, email: BeachRule@dec.ny.gov

**Additional matter required by statute:** The Department completed an environmental assessment pursuant to 6 NYCRR Part 617 and a coastal assessment pursuant to 19 NYCRR Part 600.

#### Revised Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department or DEC) has adopted revisions to New York's water quality standards to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). The Department has also adopted upgrades to the classification of two water bodies.

#### 1. Statutory Authority

The statutory authority for adoption of water quality standards and classifications is found in the Environmental Conservation Law (ECL) Articles

3 and 17, specifically, Section 17-0301 which provides that the Department "shall group the designated waters of the state into classes. Such classification shall be made in accordance with considerations of best usage in the interest of the public" and further that the Department "shall adopt and assign standards of quality and purity for each such classification necessary for the public use or benefit contemplated by such classification."

#### 2. Legislative Objectives

The legislative objectives related to this adopted rule are to "conserve, improve and protect [the State's] natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social wellbeing." ECL 1-0101(1). Furthermore, it is the policy of the State to guarantee that the "widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintended consequences." ECL 1-0101(3)(b). In furtherance of these broad policies, specific objectives are to "maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof..." ECL 17-0101.

#### 3. Needs and Benefits

The adopted rule adds new fecal indicator criteria for all coastal recreation waters and new definitions for the term "coastal recreation waters," which are needed to meet the requirements of the federal BEACH Act. The adopted standards are consistent with the United States Environmental Protection Agency's (USEPA's) 2012 Recreational Water Quality Criteria (RWQC). The RWQC are USEPA's recommendations for protecting human health in waters designated for primary contact recreation use. The adopted standards are: a 30-day Geometric Mean (GM) of 35 cfu/100mL and a statistical threshold value (STV) of 130 cfu/100mL for enterococci, and a 30-day GM of 126 cfu/100mL and a STV of 410 cfu/100mL for E. coli. Existing total and fecal coliform standards for recreational use protection are not repealed in the adopted rule.

In evaluating the waters that will be defined as "coastal recreation waters," and covered by the adopted rule, the Department identified two large coastal waters, which are currently designated as Class I, and, therefore, are not designated as having a best usage of primary contact recreation: Upper New York Bay (6 NYCRR § 890.6 - Item No. 6); and a portion of Lower New York Bay (6 NYCRR § 890.6 - Item No. 4). Considering the water quality improvements in these two coastal waterbodies and that they are adjacent to numerous public beaches, the Department has determined that they should have a designated best usage of primary contact recreation and, as a result, need to be reclassified from Class I to Class SB.

In 2015, the Department revised its regulations to require that Class I and SD waters be of quality suitable for swimming. However, that 2015 Class I and SD rule making did not revise the best usages of those waters. The best usages of those waters remained "secondary contact recreation and fishing," and "fishing," respectively. Therefore, reclassification of 6 NYCRR § 890.6 - Item Nos. 4 and 6 is necessary to make them coastal recreation waters.

#### 4. Costs

The financial impact due to the adoption of the adopted E. coli standard is considered to be de minimus, as existing treatment facilities with disinfection discharging to the Great Lakes are expected to meet the adopted standard without significant adjustments. However, there may be an increased cost for laboratory analysis, depending on how the Department implements the adopted E. coli standards for dischargers to the Great Lakes. Additional costs for laboratory analysis of up to \$73,350 may occur should DEC require such facilities to sample and report both E. coli and fecal coliform. However, if DEC supplants coliform in permits with enterococci, there will be no additional cost because the analytical costs for these two indicators are the same.

Under the adopted enterococci standards, 25 municipal wastewater treatment plants and 4 Private, Commercial, and Institutional (PCI) facilities discharging to marine coastal recreation waters (including waters reclassified by this rule) will likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department estimates that 9 municipal wastewater treatment facilities and 2 PCI facilities will incur a collective capital cost of approximately \$55 million to construct chlorination/dechlorination and that all 29 impacted facilities will incur increased O&M costs, collectively totaling approximately \$14 million per year.

There may also be an increased cost for laboratory analysis, depending on how the Department implements the adopted enterococci standards for dischargers to the marine coastal recreation waters. Additional costs for laboratory analysis of up to \$208,620 may occur should DEC require such facilities to sample and report both enterococci and coliform. However, if DEC supplants coliform in permits with enterococci, there will be no additional cost because the analytical costs for these two indicators are the same.

Certain coastal Class SB waters (including waters reclassified in this rule from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402(q) and adhere to the terms of the 2005 Consent Order between NYSDEC and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated from this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's State Pollutant Discharge Elimination System (SPDES) Permits, the CSO Control Policy and CWA section 402(q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide & East River/ Open Water LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies. For the waterbodies subject to the proposed rule, the LTCP analysis includes a comparison of compliance with enterococci criteria. This analysis predicts that the proposed new criteria does not necessitate additional CSO projects at this time.

The adopted reclassification will also cause a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these waters. An examination of the current DO levels in these water bodies reveals that the new standard will be attained and will not likely result in additional costs.

#### 5. Local Government Mandates

As described in this document, this adopted rule revised and updated New York State's water quality standards which in turn will be incorporated into permits issued under Titles 7 and 8 of Article 17 of the Environmental Conservation Law. Any county, city, town, village, school district, fire district, or other special district permitted to discharge under the above statute may be responsible for complying with revised effluent limitations resulting from the adopted rule. The Department has reviewed potentially affected permits and included the estimated costs to comply with the adopted rule discussed above. Beyond these costs, this rule will not impose any additional program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

#### 6. Paperwork

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances included in their permit. The adopted regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for which they were previously not regulated will have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This adopted rule does not require the submission of any new forms.

#### 7. Duplication

Both federal law and federal regulations set forth requirements for states regarding water quality standards (uses and criteria). Under federal law, promulgation of surface water standards is primarily a state responsibility. EPA provides oversight and guidance and approves state standards for surface water but does not promulgate standards that apply nationwide. However, where a state's standards are inadequate, and EPA disapproves, EPA must then promulgate standards for the state if the state does not timely address the inadequacies.

#### 8. Alternatives

The Department considered the "no action" alternative which could place the State in the position of not meeting the federal BEACH Act. The no action alternative was rejected as it was determined to be less protective of coastal recreation waters than the adopted rule and would not implement the requirements of the BEACH Act. The "no action" alternative for the reclassification was also rejected because the reclassification is appropriate at this time due to improvements in water quality since 1985 and because the two large coastal waters are adjacent to numerous public beaches.

#### 9. Federal Standards

The adopted regulatory changes do not exceed any federal minimum standards.

#### 10. Compliance Schedule

The adopted rule will take effect on the date specified in the Notice of Adoption as published in the State Register. However, the Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rule making becomes effective it will be implemented in permits when

they are modified. If additional treatment is required, a compliance schedule may be included in the permit on a case-by-case basis and may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the adopted rule, it is expected that the Department will be able to review, modify, and renew affected permits within five years of the effective date of promulgation.

#### **Revised Regulatory Flexibility Analysis**

The New York State Department of Environmental Conservation (Department or DEC) has adopted revisions to New York's water quality standards to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). The Department has also adopted upgrades to the classification of two water bodies.

##### **1. Effect of Rule**

The Department reviewed the rule and identified the likely anticipated costs that are set forth in this section. The Department identified 41 municipal wastewater treatment plants ranging from 0.1 million gallons per day (MGD) to 135 MGD treatment capacity discharging to coastal recreation waters (including waters proposed for reclassification by this rule). Sixteen (16) of the 41 municipal wastewater treatment plants discharge to the Great Lakes, while the remaining 25 facilities discharge to marine coastal recreation waters (including waters proposed for reclassification by this rule). Additionally, 4 Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to marine coastal recreation waters.

The financial impact due to the adoption of the proposed *E. coli* standard is considered to be de minimus, as existing treatment facilities with disinfection discharging to the Great Lakes are expected to meet the proposed standard without significant adjustments. However, there may be an increased cost for laboratory analysis, depending on how the Department implements the proposed *E. coli* standards for dischargers to the Great Lakes. The Department is not repealing the existing total and fecal coliform standards. Incorporation of the standards into State Pollutant Discharge Elimination System (SPDES) permits, after adoption of the rule, will comply with all applicable laws, regulations, and criteria. The approach will be protective of the best uses, while avoiding unnecessary duplication. At this time, the Department has not determined whether the *E. coli* standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards. Additional costs for laboratory analysis of up to \$73,350 may occur should the Department require such facilities to sample and report both *E. coli* and fecal coliform. At this time, DEC has not determined whether the *E. coli* standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication.

The Department revised the express terms so that the proposed standards for *E. coli* in Class A, A-Special, AA, and AA-Special waters would not necessarily apply year-round. This revision may reduce the need for samples outside of the primary contact recreation season and thus reduce costs for laboratory analysis.

Under the adopted enterococci standards, 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) will likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department analyzed the costs associated with disinfection using chlorination and ultraviolet radiation (UV).

The estimated unit cost for building a UV disinfection system is \$512,676/MGD design flow in capital costs with an estimated O&M cost of \$10,000/MGD per year. Given that the total capital cost for conversion to UV disinfection is significantly higher than other alternatives, the estimated financial impact assumes that the impacted facilities will not choose the UV option. For facilities that already have an existing UV disinfection system, the most cost-effective alternative is to double the UV light intensity or dosing, thus the financial impact of \$10,000/MGD per year will be that resulting solely from increased O&M expenditures. Construction of a de-chlorination facility is estimated to cost \$220,000/MGD. The average O&M cost of approximately \$18,600/MGD per year was used to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination and \$27,900/MGD per year for facilities that currently chlorinate but would need to add de-chlorination facilities. The Department estimates that 9 municipal wastewater treatment facilities and 2 PCI facilities will incur a collective capital cost of approximately \$55 million to construct chlorination/dechlorination and that all 29 impacted facilities will incur increased O&M costs, collectively totaling approximately \$14 million per year.

There may also be an increased cost for laboratory analysis, depending

on how the Department implements the new enterococci standards for dischargers to the marine coastal recreation waters. The Department is not repealing the existing total and fecal coliform standards. The method for implementation of the standards into SPDES permits as limitations would be determined following adoption of the criteria. Additional costs for laboratory analysis of up to \$208,620 may occur should the Department require such facilities to sample and report both enterococci and coliform. The Department revised the express terms so that the proposed standards for enterococci in Class SA waters will not necessarily apply year-round. This revision may reduce the need for samples outside of the primary contact recreation season and thus reduce costs for laboratory analysis.

Certain coastal Class SB waters (including waters reclassified from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402(q), and adhere to the terms of the 2005 Consent Order between the Department and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated from this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's State Pollutant Discharge Elimination System (SPDES) Permits, the CSO Control Policy and CWA section 402(q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies.

The reclassification causes a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these reclassified waters. The existing DO standard for Class I is a minimum of 4.0 mg/L, while the existing DO standard for Class SB is a minimum of 4.8 mg/L, with allowable excursions below 4.8 mg/L for limited periods of time. An examination of the current DO levels in these water bodies reveals that the new standard will be attained and not likely result in additional costs.

##### **2. Compliance Requirements**

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances include in their permit. The adopted regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for which they were previously not regulated would have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This rule does not require the submission of any new forms. As mentioned above, the Department has identified costs associated with the rule that may be incurred by small businesses or local governments.

##### **3. Professional Services**

There may be professional engineering services needed for the facilities potentially affected by the adopted rule, as mentioned above, to upgrade existing disinfection systems.

##### **4. Compliance Costs**

The Department reviewed the rule and identified the likely anticipated costs that are set forth in this section. The estimated total financial impact for capital and O&M costs is for the municipal wastewater treatment facilities and PCI facilities to meet the proposed standards is a capital cost of approximately \$55 million and a net increase in O&M costs of approximately \$14 million per year. Additional costs for laboratory analysis of up to \$73,350 may occur should the Department require facilities to sample and report both *E. coli* and fecal coliform. Additional costs for laboratory analysis of up to \$208,620 may occur should the Department require facilities to sample and report both enterococci and coliform. For a more detailed discussion please see above.

##### **5. Economic and Technological Feasibility**

The Department has concluded that compliance by regulated parties is both economically and technologically feasible. Under the adopted enterococci standards 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) will likely need to upgrade their existing disinfection systems or incur increased O&M costs resulting from higher dosing.

##### **6. Minimizing Adverse Impact**

In developing this rulemaking, consideration was given to approaches that would minimize adverse economic impacts of the rule on small businesses and local governments such as differing requirements, outcome standards, and potential exemptions from coverage. Given the nature of this rule, and in order to adequately protect the waters of the State and to

meet the requirements of federal law, differing requirements or potential exemptions for small businesses and local governments were not feasible. However, for the potentially impacted facilities subject to this rule, the Department will allow necessary time to establish a path to compliance.

These regulatory changes will take effect on the date stated in the Notice of Adoption that is published in the State Register. The Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rulemaking becomes effective it would be implemented in permits when they are modified. If additional treatment is required, a compliance schedule may be included in the permit on a case-by-case basis. Such a compliance schedule may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the proposed rule, it is expected that the Department will be able to review, modify, and renew affected permits within five years of the effective date of promulgation.

#### 7. Small Business and Local Government Participation

The Department has informed the public about the proposed rule through the Department website, letters to dischargers and municipalities, and notices in the Environmental Notice Bulletin and the State Register. The Department has held two public information meetings and two public hearings pertaining to the rule making. The public has had the opportunity to comment on the proposed rule by attending a public hearing or by submitting written comments to the Department. The public also had an opportunity to comment on the revisions to the proposed rule by submitting written comments to the Department.

#### Revised Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (Department or DEC) has adopted revisions to New York's water quality standards to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). The Department has also adopted upgrades to the classification of two water bodies.

##### 1. Types and Estimated Numbers of Rural Areas

The adopted rule adds new water quality standards for coastal recreation waters and reclassifies certain Class I waters consisting of Upper New York Bay and a portion of Lower New York Bay to add the best usage of primary contact recreation to these waters. Coastal recreation waters are found along the shores of Bronx, Cayuga, Chautauqua, Erie, Jefferson, Kings, Monroe, Nassau, Niagara, Orleans, Oswego, Queens, Richmond, St. Lawrence, Suffolk, Wayne, and Westchester counties. The Class I waters reclassified to Class SB border Kings, New York, and Richmond counties. Cayuga, Chautauqua, Jefferson, Orleans, Oswego, St. Lawrence, and Wayne counties are rural areas as defined in Executive Law.

##### 2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances include in their permit. The adopted regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for which they were previously not regulated will have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This adopted rule does not require the submission of any new forms, nor require substantial additional professional services, in rural areas of the State.

##### 3. Costs

As mentioned in the Final Regulatory Impact Statement (RIS) this rule may have a financial impact related to an increased cost for laboratory analysis, depending on how the Department implements the adopted E. coli standards for dischargers to the Great Lakes. Incorporation of the standards into State Pollutant Discharge Elimination System (SPDES) permits, after adoption of the rule, will comply with all applicable laws, regulations, and criteria. The approach will be protective of the best uses, while avoiding unnecessary duplication. Additional costs for laboratory analysis of up to \$73,350 may occur should the Department require facilities to sample and report both E. coli and fecal coliform.

##### 4. Minimizing Adverse Impact

The Department has revised the adopted express terms from the original proposal so that the adopted standards for E. coli in Class A, A-Special, AA, and AA-Special waters will not necessarily apply year-round. This revision may reduce the need for samples outside of the primary contact recreation season and thus reduce costs for laboratory analysis.

##### 5. Rural Area Participation

The Department has informed the public about the rule through the

Department website, letters to dischargers and municipalities, and notices in the Environmental Notice Bulletin and the State Register. The Department has held two public information meetings and two public hearings pertaining to the rule making. The public has had the opportunity to comment on the proposed rule by attending a public hearing or by submitting written comments to the Department. The public has also had the opportunity to comment on the revisions to the proposed rule by submitting written comments to the Department.

#### Revised Job Impact Statement

This document is prepared in accordance with the State Administrative Procedure Law (SAPA) § 201-a. Pursuant to SAPA § 201-a(2)(a), the Department has determined that a Job Impact Statement is not required because the adopted rule will not have a substantial adverse impact on jobs and employment opportunities. This document contains the Department's rationale for this determination.

##### 1. Nature of Impact

The Department has adopted new standards for all coastal recreation waters to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). In addition, the Department has reclassified certain Class I waters consisting of Upper New York Bay and a portion of Lower New York Bay to add the best usage of primary contact recreation to these waters. The only businesses or entities that could potentially be adversely impacted by this rule are those that hold State Pollutant Discharge Elimination System (SPDES) permits for discharge to the affected waterbodies.

##### 2. Categories and Numbers Affected

The Department reviewed the adopted rule and identified the likely anticipated costs that are set forth in this section. The Department identified 41 municipal wastewater treatment plants ranging from 0.1 million gallons per day (MGD) to 135 MGD treatment capacity discharging to coastal recreation waters (including waters reclassified by this rule). Sixteen (16) of the 41 municipal wastewater treatment plants discharge to the Great Lakes, while the remaining 25 facilities discharge to marine coastal recreation waters (including waters reclassified by this rule). Additionally, 4 Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to marine coastal recreation waters.

The financial impact due to the adoption of the E. coli standard is considered to be de minimis, as existing treatment facilities with disinfection discharging to the Great Lakes are expected to meet the adopted standard without significant adjustments. Additional costs for laboratory analysis of up to \$73,350 may occur should the Department require such facilities to sample and report both E. coli and fecal coliform.

Under the adopted enterococci standards, 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters reclassified from Class I to Class SB by this rule) will likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department analyzed the costs associated with disinfection using chlorination and ultraviolet radiation (UV).

The estimated unit cost for building a UV disinfection system is \$512,676/MGD design flow in capital costs with an estimated O&M cost of \$10,000/MGD per year. Given that the total capital cost for conversion to UV disinfection is significantly higher than other alternatives, the estimated financial impact assumes that the impacted facilities will not choose the UV option. For facilities that already have an existing UV disinfection system, the most cost-effective alternative is to double the UV light intensity or dosing, thus the financial impact of \$10,000/MGD per year will be that resulting solely from increased O&M expenditures. Construction of a de-chlorination facility is estimated to cost \$220,000/MGD. The average O&M cost of approximately \$18,600/MGD per year was used to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination and \$27,900/MGD per year for facilities that currently chlorinate but will need to add de-chlorination facilities. Additional costs for laboratory analysis of up to \$208,620 may occur should the Department require such facilities to sample and report both enterococci and coliform.

The Department estimates that 9 municipal wastewater treatment facilities and 2 PCI facilities would incur a collective capital cost of approximately \$55 million to construct chlorination/dechlorination and that all 29 impacted facilities would incur increased O&M costs, collectively totaling approximately \$14 million per year.

Although these costs are not de minimis, they are spread across a large number of facilities over time and are not likely to impact in any measurable way job opportunities in New York State. To the contrary, this rule may create job opportunities for engineers and construction firms to design and construct necessary waste water treatment plant retrofits.

Certain coastal Class SB waters (including waters reclassified from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is be-



ing implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402(q) and adhere to the terms of the 2005 Consent Order between NYSDEC and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated to be driven by this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's SPDES Permits, the CSO Control Policy and CWA section 402(q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies. For the waterbodies subject to the proposed rule, the LTCP analysis includes comparison of enterococci criteria. This analysis predicts that the proposed new criteria does not necessitate additional CSO projects at this time.

The adopted reclassification has also caused a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these waters. The existing DO standard for Class I is a minimum of 4.0 mg/L, while the existing DO standard for Class SB is a minimum of 4.8 mg/L, with allowable excursions below 4.8 mg/L for limited periods of time. An examination of the current DO levels in these water bodies reveals that the new standard will be attained and not likely result in additional costs.

### 3. Regions of Adverse Impact

This rule sets forth new water quality standards for coastal recreation waters. These waters are found along the shores of Bronx, Cayuga, Chautauqua, Erie, Jefferson, Kings, Monroe, Nassau, Niagara, Orleans, Oswego, Queens, Richmond, St. Lawrence, Suffolk, Wayne, and Westchester counties. This rule also upgraded the classification of Class I coastal waters of Upper New York Bay and a portion of Lower New York Bay, found along the shores of Kings, New York, and Richmond counties. However, as mentioned above, the adopted rule is not likely to negatively impact in any measurable way job opportunities in the State of New York. To the contrary, this rule may create job opportunities for engineers and construction firms to design and construct necessary wastewater treatment plant retrofits and may result in fewer beach closures which in turn would potentially increase tourism revenue for the affected areas.

### 4. Minimizing Adverse Impact

The adopted regulatory changes will take effect on the date specified in the Notice of Adoption. However, the Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rule making becomes effective it would be implemented in permits when modified. If additional treatment is required, a compliance schedule may be included with the permit on a case-by-case basis. Such a compliance schedule may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the adopted rule, it is expected that the Department will be able to review and renew affected permits within five years of the effective date of promulgation.

### 5. Conclusion

The Department has determined that this potential impact is not a "substantial adverse impact on jobs and employment opportunities" as that term is defined in section 201-a(6)(c) of the New York State Administrative Procedure Act. In addition, this rule will not have a measurable impact on self-employment. Therefore, the Department has determined that a Job Impact Statement is not required.

### Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

### Assessment of Public Comment

Comments were received in writing for the revised rule proposed on February 27, 2019. Commenters supported the change in averaging period from 90 days in the original (March 21, 2018) proposed rule, to 30 days as in the revised (February 27, 2019) proposed rule. Some comments were critical of the responses by New York State Department of Environmental Conservation (the "Department") to the original comments or that the revised proposal did not make all of the changes that the commenters had requested. Several comments were repeated from comments on the original proposed rule.

In the final rule, and in consideration of public comment, the Depart-

ment made a minor font modification and withdrew several elements of the revised proposal. The minor font modification is the italicization of the indicator organism *E. coli*. In response to comments on the notice of revised rule making, the following non-substantial revisions were made: (1) proposed changes related to existing total and fecal coliform standards and the associated clarification of language under the proposed 6 NYCRR 703.4(e) were withdrawn; (2) language governing the applicability of the new enterococci and *E. coli* standards was pared back and renumbered under a new 6 NYCRR § 703.4(f); and (3) the proposed definition of primary contact recreation season was withdrawn and instances where it was used were replaced with the time period itself, which is May 1 through October 31.

Detailed responses to public comment are provided in the full Assessment of Public Comment document, available on the DEC website, at <https://dec.ny.gov/regulations/112962.html>.

## New York State Gaming Commission

### NOTICE OF ADOPTION

#### Sports Wagering at Gaming Facilities

**I.D. No.** SGC-12-19-00007-A

**Filing No.** 573

**Filing Date:** 2019-06-11

**Effective Date:** 2019-06-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of Part 5329 to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1367(3)(a), (b) and (5)

**Subject:** Sports wagering at gaming facilities.

**Purpose:** To regulate and control sports wagering as directed by statute.

**Substance of final rule:** The addition of Part 5329 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe the rules for sports wagering at gaming facilities.

Section 5329.1 sets forth definitions applicable to sports wagering.

Section 5329.2 sets forth the process by which a gaming facility may petition for a sports pool license.

Section 5329.3 sets forth the term of a sports pool license and describes the review process for continuing licensure.

Section 5329.4 allows for contracting with a sports pool vendor to operate or assist in the operation of sports pools on behalf of a gaming facility and sets forth licensing requirements.

Section 5329.5 establishes a continuing duty to report operator and sports pool vendor changes.

Section 5329.6 describes occupational licensing requirements of individuals.

Section 5329.7 authorizes action in the event of misconduct or improper associations.

Section 5329.8 requires internal controls and sets forth minimum requirements for internal controls.

Section 5329.9 sets forth requirements for the sports wagering lounge physical space.

Section 5329.10 sets forth sports pool system requirements.

Section 5329.11 sets forth regulations for automated ticket machines.

Section 5329.12 requires each operator to establish house rules for sports wagering and sets forth minimum requirements for house rules.

Section 5329.13 regulates wager types and sets forth that prior Commission approval of a wager type is required.

Section 5329.14 sets forth requirements for parlay card wagers.

Section 5329.15 allows layoff wagers as a risk management tool.

Section 5329.16 requires certain information to be available to patrons.

Section 5329.17 sets forth requirements for the manner in which wagers may be placed.

Section 5329.18 sets forth requirements for wagering tickets.

Section 5329.19 sets forth certain restrictions on wagering, including by minors, prohibited persons and proxies.

Section 5329.20 regulates ticket payout procedures and establishes certain reporting requirements.

Section 5329.21 regulates the circumstances under which wagers may be cancelled.